IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2650 OF 2006

Ramnath Bhagwant Mishra
and another. ... Appellants.

V/s.

Dwarkanath Shobnath Mishra
and others. ... Respondents.

P.N.G. Shukla for the appellants.

A.R.Pandey for the respondent.

CORAM: D.B.BHOSALE, J.

DATED: 27th November 2006.

P.C. :

. Heard learned counsel for the parties.

2. Admit.

. Mr.Pandey for the respondents waives service for the respondents.

3. By consent of the learned counsel for the parties, appeal is taken up for final hearing forthwith.

4. By impugned judgment, the Court below has rejected the plaint under order 7 rule 11(b) and (c) of Code of Civil Procedure, 1908 ("C.P.C." for short). Learned counsel for the parties admit

that the procedure contemplated by order 7 rule 11 of C.P.C. has not been followed by the Court below while passing the order dismissing suit on the aforesaid ground. They have fairly stated that I need not record reasons for setting aside the order and they have agreed for remand of the proceedings for its consideration afresh. Hence the following order:

(a) The impugned order dated 19th July, 2006 is quashed and set aside.

(b) The proceedings are remitted back to the Court below. The Court below is directed to consider the preliminary issue afresh and shall follow the procedure contemplated by order 7 rule 11 (b) and (c) of C.P.C. as expeditiously as possible and, at any rate, within eight weeks from today.

5. Appeal is accordingly disposed of with no order as to costs.

(D.B.BHOSALE, J.)